

TRULINCS 27328058 - DAVEY, JONATHAN D - Unit: ELK-C-B

FROM: 27328058
TO:
SUBJECT: FOIA Complaint
DATE: 01/02/2019 04:56:30 PM

Case: 1:19-cv-00106
Assigned To : Unassigned
Assign. Date : 1/7/2019
Description: FOIA /Privacy Act (I-DECK)

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Jonathan Davey,
Plaintiff

v.

United States
Department of Justice
Federal Bureau of Investigation,
Defendant



Complaint seeking Disclosure of Agency Records Pertaining to Plaintiff and Improperly Withheld

Complaint:

This is an action under the Freedom of Information Act (FOIA), 5 USC Sec. 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records pertaining to Plaintiff, Jonathan Davey, improperly withheld from him by the Federal Bureau of Investigation (FBI).

Jurisdiction and Venue:

This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC Sec. 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 USC Sec. 1331. Venue lies in the district under 5 USC Sec. 552(a)(4)(B).

Parties:

Plaintiff is an inmate of the Federal Bureau of Prisons at FCI-Elkton, Ohio. Defendant, the FBI, is under the Department of Justice of the Executive Branch of the United States Government, and includes the FBI. The FBI is an agency within the meaning of 5 USC Sec. 552 (f).

Facts:

1) By letter dated March 6, 2017 addressed to the FBI's Record/Information Section, 935 Pennsylvania Avenue, NW, Washington, DC 20535, Plaintiff requested copies of all records pertaining to himself and the criminal case no:3:12-cr-00068-RJC in the Western District of North Carolina, Charlotte Division. Plaintiff requested all emails, text messages, and other written correspondence related to the Black Diamond Ponzi scheme for the period of January 1, 2009 to December 31, 2010.

2) By letter dated August 28, 2017 from David Hardy, FBI Section Chief of Records and Dissemination, Mr. Hardy advised Plaintiff that his FOIA request had been received, the search criteria processed, and that the FBI had located 7,638 pages potentially responsive to his request. Mr. Hardy further advised Plaintiff that the duplicating costs and release of 16 CDs containing the 7,638 pages would be \$235. Mr. Hardy requested a response either indicating a willingness to pay the duplicating fee or narrowing the scope of the request. Plaintiff's FOIA request was assigned the following FOIPA numbers: 1370106-000 & 1370106-001.

3) By letter dated September 14, 2017 to Mr. Hardy, Plaintiff requested more information on the results of the search criteria in order to reduce the scope and volume of the responsive pages.

4) By letter dated September 25, 2017 from Mr. Hardy, Plaintiff received essentially a duplicate letter of the one Mr. Hardy issued to Plaintiff on August 28, 2017.

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- 5) By letter dated June 4, 2018 to Mr. Hardy, Plaintiff requested a status update on his FOIA request.
- 6) By letter dated June 14, 2018 from Mr. Hardy, Plaintiff was informed that his FOIA request had been administratively closed.
- 7) By letter dated July 24, 2018 to the Department of Justice's Director of Information Policy, 1425 New York Avenue, NW, Suite 11050, Washington, DC 20530-0001, Plaintiff appealed the decision of the FBI to administratively close his FOIA request. Plaintiff also agreed to pay the duplication costs of \$235 if his appeal was successful. Plaintiff's appeal was assigned the following numbers: DOJ-AP-2018-007736 & DOJ-AP-2018-007737.
- 8) By letter dated July 30, 2018 to Mr. Hardy, Plaintiff indicated that he was willing to pay the \$235 duplicating costs for the 16 CDs and provided a residential address to receive the CDs.
- 9) By letter dated September 14, 2018 from Matthew Hurd, Chief for Sean O'Neill, Chief Administrative Appeals Staff, Plaintiff received notice that Mr. Hurd was affirming the FBI's action on Plaintiff's request. The FBI claimed an exemption under 5 USC Sec. 552(b)(7)(A). The FBI provided no further information as to why this blanket exemption covered all 7,638 pages.
- 10) By letter dated October 5, 2018 to the Office of Government Information Services (OGIS), 8601 Adelphia Road, Room 2510, College Park, MD 20740-6001, Plaintiff requested mediation services to resolve the denial of his FOIA request in hopes of avoiding litigation. Plaintiff stated that FOIA mandates a strong presumption in favor of disclosure and exemptions are to be narrowly construed. Further, this Court has already noted that "individuals already publicly identified as having been charged or convicted...have a diminished privacy interest...and therefore the categorical rule of non-disclosure...does not apply." Citizens For Responsibility and Ethics in Washington v. United States DOJ, 854 F.3d 675, 682 (DC Circ, 2017).
- 11) By letter dated October 23, 2018 from the OGIS, Plaintiff was requested to submit all previous correspondence with the FBI regarding his FOIA request.
- 12) By letter dated November 7, 2018 to the OGIS, Plaintiff responded to OGIS's request and enclosed the requested correspondence which included five attachments.
- 13) By letter of December 3, 2018 from the OGIS, Plaintiff received notice that OGIS could not provide any further assistance.
- 14) Thus Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request. Plaintiff has a right of prompt access to the requested records under 5 USC Sec. 552 (a)(3)(A) and the FBI has wrongfully withheld the sought-after documents. Further, the FBI has ignored the clear direction of this Court's previously ruling.


Requested Relief:

Wherefore, Plaintiff prays that this Court:

1. order Defendant to disclose the requested records in their entireties and make copies available to Plaintiff;
2. provide for expeditious proceedings in this action;
3. award Plaintiff his costs and reasonable attorney fees incurred in this action; and
4. grant such other relief as the Court may deem just and proper.

Dated: January 3, 2019

Respectfully Submitted,


Jonathan Davey, pro se
Reg.#: 27328-058
FCI-Elkton, OH
PO Box 10
Lisbon, OH 44432

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*** CERTIFICATE OF SERVICE ***

On this day, January 3rd 2019, I did place a true and accurate copy of this Complaint in the prison legal mail system, postage prepaid, for delivery to the following address:

UNITED STATES DISTRICT COURT OF COLUMBIA
333 Constitution Avenue NW
Room 1225
Washington, DC 20001


Jonathan Davey, pro se